

# Mao Declaration Ex. 7

Redacted Version of  
Document Sought to be  
Sealed

**Preclusion: Court Findings**

<b>Requested Finding</b>	<b>Basis For Requested Finding</b>
1. Throughout the class period, Google used multiple processes to identify Plaintiffs' and class members' private browsing activities.	Google violated Court orders by failing to investigate and identify all relevant data sources, and the evidence demonstrates that Google used at least four processes (the four detection bits) that relied on different heuristics to identify Plaintiffs' and class members' private browsing activities.
2. Throughout the class period, Google used multiple processes to detect private browsing activity in at least Chrome, Safari, Edge.	Google violated Court orders by failing to investigate and identify all relevant data sources, and the evidence demonstrates that Google used at least four processes (the four detection bits) that relied on different heuristics to identify Plaintiffs' and class members' private browsing activities in at least Chrome, Safari, and Edge.
3. Throughout the class period, Google systematically intercepted, collected, stored, and used Plaintiffs' and class members' private browsing information.	Google violated Court orders by failing to investigate and identify all relevant data sources, and such discovery would have demonstrated the full scope of Google's systematic interception, collection, storage, and use of private browsing information.
4. Throughout the class period, Google read and learned the contents or meaning of Plaintiffs' and class members' private browsing communications.	Google violated Court orders by withholding and refusing to provide discovery that would have demonstrated the full scope of Google's use of the private browsing information it collected and, thus, Google's conduct with respect to this contents or meaning element of Plaintiffs' claims.
5. Throughout the class period, Google took, copied, and made use of Plaintiffs' and class members private browsing data.	While Google has belatedly admitted to this for some identified purposes, Google violated Court orders by failing and refusing to provide discovery that would have demonstrated the full scope of Google's conduct regarding these issues as to Google taking, copying, and using the data.
6. Throughout the class period, Google readily and systematically mixed private browsing data with other data it stores.	While Google has belatedly admitted to this in some instances, Google violated Court orders by failing and refusing to provide discovery that would have demonstrated the full scope of Google's conduct regarding

	these issues as to Google mixing private browsing data with the other data it stores.
7. Throughout the class period, Google's use of browsing data to develop or improve any products, services, or algorithms presumptively included private browsing data.	Plaintiffs requested to depose a Rule 30(b)(6) witness on this topic. <i>See</i> Dkt. 421-3 at 12 (Notice 1, Topic 16, requesting "For the Class Period, Google's use of information collected from users within a private browsing mode for purposes of improving and developing Google services, products, and algorithms, including without limitation Google Analytics, Google Ad Manager, and Search, as well as developing new products, services, and algorithms"). Google objected, stating that "This topic . . . would implicate dozens of Google business units and products." <i>Id.</i> Google violated Court orders by failing and refusing to provide discovery that should have otherwise covered that Rule 30(b)(6) topic, and only belatedly admitted to some (but not all) of the ways that Google has used private browsing data to develop and improve its products, services, and algorithms.
8. Throughout the class period, Google's conduct in terms of collecting, storing, and using Plaintiffs' and class members' private browsing data was highly offensive.	Google violated Court orders by failing and refusing to provide discovery that would have demonstrated the full scope of the conduct at issue, which is relevant to assessing the element of offensiveness.
9. In response to multiple court orders, Google withheld relevant information regarding its collection, storage, and use of private browsing data.	Google violated Court orders by failing and refusing to provide relevant discovery, which supports a finding to that effect.

**Preclusion: Google Arguments**

<b>Requested Preclusion</b>	<b>Basis For Requested Preclusion</b>
1. Google is precluded from arguing that it has no way of determining how often users use private browsing modes.	Google violated Court orders by failing and refusing to provide relevant discovery regarding all ways in which Google has sought to determine how often users use private browsing modes, while Google has also falsely asserted that it has no way of making this determination. <i>See</i> Google Response to Interrogatory No. 33 (stating that Chrome prevents "detection" and that "Google has no way of determining how often

	users use private browsing modes on other browsers.”).
2. Google is precluded from arguing that it does not join private browsing data to authenticated data.	While Google has belatedly admitted that there is at least one data source that stores data from both authenticated and unauthenticated logs, Google violated Court orders by failing and refusing to provide discovery regarding that log and other logs, and any safeguards against data being joined in those logs. Google also violated the Court’s OSC by failing to provide all of the relevant source code necessary to evaluate Google’s claims that the data is not joined.
3. Google is precluded from arguing that its data sources, including those sources for authenticated data, do not include private browsing data.	Google violated Court orders by failing and refusing to provide relevant discovery regarding relevant data sources, including sources for authenticated data, which supports a finding to that effect.
4. Google is precluded from arguing that it does not use private browsing data to “perform analysis and modeling to predict ad revenues.”	Google has belatedly admitted that data from private browsing is used to perform analysis and modeling to predict ad revenues. <i>See</i> Dkt. 696-4 ¶ 6 (identifying “[REDACTED]” logs used to perform analysis and modeling to predict ad revenues). Google violated Court orders by failing and refusing to provide discovery that should have covered how Google engaged in these practices and the extent of these practices.
5. Google is precluded from arguing that it does not use private browsing data for “ads related to third-party exchanges.”	Google has belatedly admitted that data from private browsing is used for ads related to third-party exchanges. <i>See</i> Dkt. 696-4 ¶ 11 (identifying third-party exchange logs that contain users’ interactions with ads related to third-party exchanges while users are in private browsing mode). Google violated Court orders by failing and refusing to provide discovery that should have covered how Google engaged in these practices and the extent of these practices.
6. Google is precluded from arguing that it has not made private browsing data available for other business purposes.	Plaintiffs requested to depose a Rule 30(b)(6) witness on this topic. <i>See</i> Dkt. 421-3 at 12 (Notice 1, Topic 16, requesting “For the Class Period, Google’s use of information collected from users within a private browsing mode

	<p>for purposes of improving and developing Google services, products, and algorithms, including without limitation Google Analytics, Google Ad Manager, and Search, as well as developing new products, services, and algorithms”). Google objected, stating that “This topic . . . would implicate dozens of Google business units and products.” <i>Id.</i> Google violated Court orders by failing and refusing to provide discovery that should have otherwise covered that Rule 30(b)(6) topic, and only belatedly admitted to some (but not all) of the ways that Google has used private browsing data to develop and improve its products, services, and algorithms.</p>
--	---

**Preclusion: Undisclosed Google Employees**

<b>Undisclosed Google Employee</b>	<b>Basis For Requested Preclusion</b>
1. Martin Sramek	Google has relied upon declarations of Martin Sramek in opposing Plaintiffs’ request for sanctions, yet Google did not include this employee’s name in the list of 220 employees Google disclosed.
2. Matt Harren	Google has relied upon a declaration of Matt Harren in opposing Plaintiffs’ request for sanctions, yet Google did not include this employee’s name in the list of 220 employees Google disclosed.
3. Borbala Benko	Google has relied upon a declaration of Borbala Benko in support of its request to destroy evidence relating to the “[REDACTED]” bit, yet Google did not include this employee’s name in the list of 220 employees Google disclosed.
4. Maciej Kuzniar	Google has relied upon a declaration of Maciej Kuzniar in opposing Plaintiffs’ request for sanctions, yet Google did not include this employee’s name in the list of 220 employees Google disclosed.
5. Eugene Lee	Google has relied upon a declaration of Eugene Lee in opposing Plaintiffs’ request for sanctions, yet Google did not include this

	employee's name in the list of 220 employees Google disclosed.
6. Xianzhi Liu	Google has relied upon a declaration of Xianzhi Liu in opposing Plaintiffs' request for sanctions, yet Google did not include this employee's name in the list of 220 employees Google disclosed.
7. Eric Maki	Google has relied upon a declaration of Eric Maki in opposing Plaintiffs' request for sanctions, yet Google did not include this employee's name in the list of 220 employees Google disclosed.
8. Vasily Panferov	Google has relied upon a declaration of Vasily Panferov in opposing Plaintiffs' request for sanctions, yet Google did not include this employee's name in the list of 220 employees Google disclosed.